



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

Record of Commission Action  
Commissioners Voting by Ballot\*

Commissioners Voting: Chairman Ann Brown  
Commissioner Mary Sheila Gall  
Commissioner Thomas H. Moore

ITEM:

Denial Letter on Petition CP 99-1 to Ban, or Require Warning Labels and Instructions for, Steel Electricians' Fish Tapes

DECISION:

The Commission voted unanimously (3-0) to deny petition CP 99-1 and approve a letter of denial to the petitioner, John C. Stein, Esquire, The Boccardo Law Firm, setting forth the reasons for the Commission's denial of the petition asking the Commission to ban, or require warning labels and instructions for steel electrician's fish tapes. Commissioner Mary Sheila Gall filed a statement concerning this matter.

For the Commission:

A handwritten signature in cursive script, reading "Sadye E. Dunn", is positioned above the printed name and title.

Sadye E. Dunn  
Secretary

\* Ballot due February 14, 2000



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**STATEMENT OF THE HONORABLE MARY SHEILA GALL ON  
PETITION TO BAN OR REQUIRE WARNING LABELS AND  
INSTRUCTIONS FOR STEEL ELECTRICIANS' FISH TAPES**

**February 9, 2000**

I join with my fellow Commissioners in voting to deny petition 99-1, requesting that the Commission ban or require warning labels and instructions for steel electricians' tapes. I agree that the costs of such a ban would be many times the benefits to be achieved by it, and that labels already exist that warn steel fish tape users about the hazards associated with its use.

I also have serious reservations over whether the Commission has jurisdiction over the risk of injury associated with the use of steel electricians' fish tapes. Section 31(a) of the Consumer Product Safety Act (CPSA) states that: "The Commission shall have no authority under this Act to regulate *any risk of injury* associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970" (emphasis added). Thus, even though steel electricians' fish tape may be a "consumer product" within the meaning of Section 3(a)(1) of the CPSA, Section 31(a) deprives the Commission of jurisdiction to regulate it when the Occupational Safety and Health Administration (OSHA) has taken or could take action to eliminate or reduce the risk of injury to a sufficient extent.

On the strength of the record presently before the Commission, it appears to me that the requirements of Section 31(a) are met. The General Counsel of the Commission received a letter dated November 16, 1999 from the Assistant Secretary of Labor for Occupational Safety and Health stating explicitly that, "electrical fish tapes do appear to be within OSHA's jurisdiction," and further that, "the hazard presented by the tapes appears to be governed by OSHA's safe electrical work practices standards at 29 C.F.R. § 1910.333 et seq." Moreover, all of the incidents involving injuries or deaths associated with the use of steel electricians' fish tape, save the one that prompted the petition, occurred in an occupational setting. All of the occupational injuries would have been prevented if OSHA's regulations had been followed. If Section 31(a) of the CPSA is to have any meaning at all, it must operate here to deprive the Commission of jurisdiction to regulate this particular risk of injury, even if the item remains a "consumer product."